



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Mr. Miles K. Risley
Assistant City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR95-728

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32428.

The City of Victoria (the "city") received a request for information maintained by the police department regarding incidents which allegedly occurred on March 1st and 2nd of 1995, at 1602 E. Goodwin in Victoria. You state that related cases have recently been presented to the District Attorney and to the City Attorney and are currently pending under offense number 9503462 and docket number 384727. You state that you have released to the requestor some of the requested information including copies of the General Offense Report, Offense Witness Report, Offense Suspect Report, Offense Summary Sheet, and the Arrest Report. You have submitted for our review all of the records created regarding these incidents including the disclosed and three undisclosed records. You contend that the information you have withheld is excepted from required disclosure by sections 552.103 and 552.101 of the Government Code.

You state that portions of the records you seek to withhold from required disclosure contain references to juvenile offenders. You contend that section 552.101 in conjunction with section 51.14(d) of the Family Code excepts from disclosure the records that contain references to juvenile offenders.

Section 552.101 of the Government Code protects from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 51.14(d) of the Family Code provides the following:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties. . . .

"Child," for purposes of section 51.14, is defined at section 51.02 of the Family Code. Section 51.02 provides in pertinent part:

- (1) "Child" means a person who is:
 - (A) ten years of age or older and under 17 years of age; or
 - (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Portions of the documents you have submitted refer to a suspected offender who is a juvenile. None of the exceptions provided in section 51.14 apply. Consequently, you may withhold the supplemental offense report and your notes on the request for information document based upon Family Code section 51.14(d) in conjunction with section 552.101 of the Government Code. See Open Records Decision No. 181 (1977) at 2.

You seek to withhold, pursuant to the informer's privilege as incorporated into section 552.101 of the Government Code, the Computer Aided Dispatch (CAD) report because portions of the document tend to identify the individual or individuals who reported the offenses.

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of a civil or criminal statute. See Open Records Decision No. 391 (1983). The CAD report reflects that a call was placed for police assistance rather than a call to report a violation of a civil or criminal statute. Thus, the informer's privilege does not apply to the CAD report. See Open Records Decision No. 515 (1988).

We consider whether section 552.103(a) of the Government Code applies to the CAD report and the K-9 report. Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

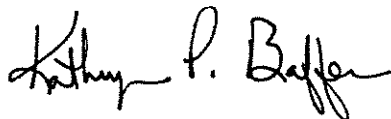
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasijudicial proceeding. Open Records Decision No. 588 (1991). In this instance you have made the requisite showing that the K-9 report relates to pending criminal litigation for purposes of section 552.103(a). After reviewing the documents, we conclude that you may withhold the K-9 report pursuant to section 552.103(a). We believe that you have not established that the CAD report relates to the pending litigation. Thus, the city may not withhold the CAD report pursuant to section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to the K-9 report, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

Ref.: ID# 32428

Enclosures: Submitted documents

cc: Ms. Linda K. Krause
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Victoria, Texas 77901
(w/o enclosures)